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No. 93-1579

In The

Supreme Court of the United States

October Term, 1993

DANNY VAUGHAN,

Petitioner,

v.

FIRST NATIONAL BANK OF SHAMROCK, TEXAS, et al.,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Tenth Circuit

RESPONDENTS' BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Should this Court grant a writ of certiorari where the Tenth Circuit Court of Appeals has correctly held that the Bankruptcy Court properly modified the automatic stay to allow Texas State Court divorce proceedings involving the debtor's property to continue?

2. Should this Court grant a writ of certiorari where the Tenth Circuit Court of Appeals has correctly held that Petitioner's allegations of violation of due process to be meritless?

LIST OF PARTIES

The parties to the proceedings in the United States Court of Appeals for the Tenth Circuit were Petitioner, Danny Vaughan, and the following respondents, many of whom were not listed in Petitioner's writ of certiorari:

Ray D. Anderson, Judge, 9th Adm Reg.; David Cave, Judge Visiting, 9th Adm Reg.; John T. Forbis, Judge, 100th Dist.; Horace A. Ray, Clerk, 115th State District; Paul Topper, Clerk, 31st State Dist.; Terri Wyatt, Court Reporter; F.L. Garrison, Judge, 115th State Dist.; Grainger McIlhany, Judge, 31st Dist.; Ray L. McKim, Judge; Patricia O'Neil, Clerk, 31st State Dist.; Gary Bellis, Process Svr.; Warren Chisum, Tx. State Rep.; Marvin Marshall, 242nd Dist. Judge; R.T. Scales, Judge Visiting, 1st Ad. Reg.; M. Kent Sims, Judge, 31st Dist.; Shirley Fore, Court Reporter; Ruth Whiteside, Court Coordinator; Karen Coleman, Dist. Clerk; David Bishop; James C. Fling; Bishop & Bishop, P.C.; Adkins & Fling; Steven R. Emmert; Jimmy Veith; Bill Spillman; Lyle R. Nelson; Mizner & Nelson, P.C.; Richard D. Bird; Bird & Bird, Richard D. Bird, Agent; D. Craig Shew; Jairl P. Dowell; Smith, Shew & Scrivner, P.C.; Ralph Brock; Phillip Pendleton; Brock, Morton & Pigg, Ralph Brock, Agent; Rudd R. Owen; Wm. F. Russell, P.C.; Day, Owen, Lyle, Voss & Owen; Jeffrey Jones; Jones, Flygare, Galey, Moody & Warton; Aubrey J. Fouts; Travis D. Shelton; Jones, Blaney & Williams; Earl S. Tate; Shelton & Jones; Crenshaw, Dupree & Milam; William R. Moss; Carr, Evans, Fouts & Hunt; Thompson, Cawley, Veasey & Burns; Glen C. Burns; Cheryl Brennan; Walco International, Inc.; Bobby R. Dunn; Mal Brennan; Panhandle Vet.

LIST OF PARTIES – Continued

Supply, Inc.; Crabileigh Vaughan; Janie Troxell; Russell Killingsworth, DVM; Linda Newstead; Barbra Pence; Randolph Waldman, M.D.; Marshall O. Pence; Belinda Seay; White Acres Good Samaritan Village; Doug Mills, Jr.; E.B. Range, Jr., DVM; Reba Hewlett, Ind. U.S. Small Business Adm.; Taurus Breeders Serv. Inc.; Leland Matthews, CPA; Randy Camp, CPA; Moore, Camp & Co., CPA's; First National Bank of Shamrock, Texas; First Bank & Trust; First Community Bank & Trust Co. of Lone Grove; Amarillo National Bank; First National Bank of Wheeler, Texas; National Bank of Commerce; Wellington State Bank; Jeff Andrews; Wise & Kaku Accountancy Corp.; First Equity Management Systems, Inc.; Harold Sanders; Charles E. Sanders; Kenneth W. Fields; Wm. & Edith Carr; Waters, Holt & Fields; Wayne & Imogene Cudd; Doug & Gertie Mills; Perry & Sidney White; Morris Westlund; Mitchell & Rose Wong; Richard & Jane Nall; Edith Young; Jim Bob Nall; David McCoy; Jonny Dee Flitton; John Mann; Mordy & Mordy, Inc.; Mike Mordy; John Inman, P.C.; Charles Darter; Ron Felty; Tyrrell-Bessenbacher Co.; Kent Wallis; First National Bank of Pampa, Texas; Lubbock Choice Computing, Inc.; D.M. Cogdell; Sammy Hale; J.M. "Corky" Garner; James R. Alexander; Harvey L. Morton; The Estate of Ben P. Ayres; Harold H. Pigg; Harold Comer; Great Plains Breeders Ser/Taurus, Inc.; David Cave; Shamrock Vet. Hosp., Inc.; R.T. Scales; F.L. "Tiny" Garrison; Stan Comer.

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RESPONDENTS' BRIEF IN OPPOSITION

TO THE UNITED STATES SUPREME COURT:

First National Bank of Shamrock, Texas; First Bank and Trust of Shamrock, Texas; Kenneth Fields; Waters, Holt and Fields; Belinda Seay; Philip E. Pendleton; Charles E. Sanders; Harold Sanders; and James C. Fling, individually and doing business as Adkins & Fling (Respondents), file this Brief in Opposition to this Petition for Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit ("Response"), asking this Court to deny the Petition for Writ of Certiorari ("Petition") to review the opinion issued December 23, 1993, by the United States Court of Appeals for the Tenth Circuit.

In support of this request, Respondents respectfully show the Court as follows:

JURISDICTION

The Court's jurisdiction of the appeal is based on the judgment and opinion of the Tenth Circuit Court of Appeals on December 23, 1993. The Petitioner's petition for rehearing was denied on January 10, 1994. This court has jurisdiction to review the judgment of the Tenth Circuit under 28 U.S.C. Sec. 1254(1).

STATEMENT OF THE CASE

A. Course of Proceedings and Disposition in Court Below.

Petitioner, Danny Vaughan, appeals to the United States Supreme Court from an Order of the United States Court of Appeals for the Tenth Circuit affirming an Order of the United States District Court for the Eastern District of Oklahoma affirming an Order of the Bankruptcy Court for the Eastern District of Oklahoma dismissing the Petitioner's Complaint for lack of subject matter jurisdiction and upon the finding that the automatic stay of 11 U.S.C. Sec. 362(a) had been properly modified pursuant to a prior order of the Bankruptcy Court entered on February 4, 1991. The procedural history of this appeal is as follows:

On July 2, 1992, Petitioner ("Debtor" in the earlier filings) filed his Complaint initiating the adversary proceeding styled *Danny Vaughan v. First National Bank of Shamrock, Texas, et al.*, Adversary No. 92-7037, in the United States Bankruptcy Court for the Eastern District of Oklahoma. The Complaint alleged certain violations of Petitioner's civil rights pursuant to 42 U.S.C. Sec. 1983 (West 1993) and his constitutional rights, malpractice, fraud, deprivation of equal protection under the law, and willful violations of the automatic stay of 11 U.S.C. Sec. 362.

On July 15, 1992, the Honorable James E. Ryan, Bankruptcy Judge for the Eastern District of Oklahoma, upon independent review of the Complaint, *sua sponte* dismissed the Complaint finding that the court lacked jurisdiction to adjudicate the non-core matters unrelated to the Petitioner's bankruptcy case, and that the automatic stay had been properly modified by prior order of the court entered on February 4, 1991.

Petitioner timely filed a Notice of Appeal to the United States District Court for the Eastern District of Oklahoma on July 27, 1992. By order entered on March 31, 1993, the Honorable Frank H. Seay, United States District Judge for the Eastern District of Oklahoma, affirmed the Bankruptcy Court's ruling. The District Court held that because the Petitioner did not appeal the Bankruptcy Court's February 4, 1991 Order, the modification of the automatic stay was final and valid and could not be circumvented by appealing the Bankruptcy Court's subsequent Order of July 15, 1992. The District Court further noted that the Bankruptcy Court did not abuse its discretion in modifying the stay of 11 U.S.C. Sec. 362 on

February 4, 1991. The Petitioner then appealed this ruling to the United States Court of Appeals for the Tenth Circuit on April 12, 1993. The Court of Appeals affirmed this judgment and Petitioner filed his Petition for Writ of Certiorari to this Court.

B. Statement of Facts.

On October 5, 1990, Danny Vaughan d/b/a Shamrock Vet Clinic d/b/a Texoma Analytical Lab filed a voluntary petition under Chapter 7 of the Bankruptcy Code. On December 12, 1990, Crabileigh Vaughan, the non-debtor spouse of Danny Vaughan, filed an Amendment to List of Exempt Property (the "Amendment") asserting that the Debtor had failed to file a complete list of exempt property and attempted to list certain Texas property as exempt. Objections to the Amendment were subsequently filed by the First National Bank of Shamrock, Texas and William M. Bonney, the Chapter 7 Trustee. On January 7, 1991 and January 8, 1991, the Clerk of the United States Bankruptcy Court sent notice that the hearing on the Objections would be held on January 23, 1991 at 10:00 a.m. This hearing was later continued to January 30, 1991 by order dated January 17, 1991. The Objections came on for hearing before the Honorable James E. Ryan on January 30, 1991. Neither Petitioner nor his attorney were present at this hearing although they were properly notified of said hearing.

On February 4, 1991, the Bankruptcy Court entered an order denying the Objections without prejudice and modifying the automatic stay of 11 U.S.C. Sec. 362 *sua sponte* to permit the continuation of a pending divorce

action in Wheeler County District Court, Texas (the "February 4, 1991 Order"). A copy of this Order was mailed to all parties and their attorneys.

On July 2, 1992, Petitioner filed a Complaint initiating the adversary proceeding styled *Danny Vaughan v. First National Bank of Shamrock, Texas, et al.*, Adversary No. 92-7037 in the United States Bankruptcy Court for the Eastern District of Oklahoma. Named as defendants in the Complaint were approximately one hundred thirty (130) individuals and entities, including attorneys, law firms and judges. The Complaint alleged certain violations of the Debtor's civil rights under 42 U.S.C. Sec. 1983 and his constitutional rights, malpractice, fraud, deprivation of equal protection under the law, and willful violations of the automatic stay of 11 U.S.C. Sec. 362.

By order entered on July 15, 1992, Judge Ryan, upon independent review of the Complaint, *sua sponte* dismissed the Complaint finding that the court lacked jurisdiction to adjudicate the non-core matters unrelated to the Petitioner's bankruptcy case, and that the automatic stay had been properly modified by the February 4, 1991 Order. Petitioner appealed the Bankruptcy Court's ruling to the United States District Court for the Eastern District of Oklahoma. The District Court affirmed the Bankruptcy Court's ruling in an Order and Memorandum Opinion entered on March 31, 1993, and Petitioner then appealed this ruling to the United States Court of Appeals for the Tenth Circuit on April 12, 1993. On December 23, 1993, the Court of Appeals for the Tenth Circuit filed its Order and Judgment holding that the modification of the automatic stay was within the sound discretion of the bankruptcy judge and that the remainder of Petitioner's

arguments were meritless and affirmed the district court order affirming the Bankruptcy Court's dismissal of Petitioner's adversary proceeding.

SUMMARY OF ARGUMENT

The Tenth Circuit's order in the present case does not warrant review by this Court. The decision does not conflict with any other circuit court opinion and correctly applies this Court's precedent and applicable law. There is no conflict among the circuit court decisions that the decision to modify the automatic stay provided for upon the filing of a bankruptcy petition is within the sound discretion of the bankruptcy judge. Petitioner's arguments related to his notice or alleged lack thereof are meritless for several reasons. First, Petitioner waived his right to contest the bankruptcy court's modification of the automatic stay because he failed to perfect an appeal from that order after notice thereof. Second, the bankruptcy court did not abuse its discretion in modifying the automatic stay since that decision is within the sound discretion of the bankruptcy judge. Third, the bankruptcy court's *sua sponte* modification of the automatic stay did not violate Petitioner's right to due process, especially since Petitioner had notice of the hearing and notice of the entry or order lifting the automatic stay and chose to do nothing.

ARGUMENTS SUPPORTING DENIAL OF THE WRIT

I. THE BANKRUPTCY COURT PROPERLY MODIFIED THE AUTOMATIC STAY ON FEBRUARY 4, 1991 TO ALLOW TEXAS STATE COURT DIVORCE PROCEEDINGS INVOLVING PROPERTY TO CONTINUE.

A. Petitioner Waived his Right to Contest the Bankruptcy Court's Modification of the Automatic Stay.

The Bankruptcy Court *sua sponte*[1] modified the automatic stay by Order dated February 4, 1991 to permit the conclusion of Petitioner's pending divorce action in Wheeler County, Texas District Court. Petitioner failed to timely appeal the February 4, 1991 Order in accordance with Bankruptcy Rules 8001 and 8002. Bankruptcy Rule 8001(1) provides in part:

> An appeal from a final judgment, order, or decree of a bankruptcy judge to a district court or bankruptcy appellate panel shall be taken by filing a notice of appeal with the clerk within the time allowed by Rule 8002.

Bankruptcy Rule 8002(a) requires the "notice of appeal . . . be filed with the clerk within 10 days of the entry of the judgment, order, or decree appealed from."

---

[1] The Court may issue any order, process, or judgement that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, *sua sponte*, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process. 11 U.S.C.A. Sec. 105(a) (West 1993).

see also In re Comer, 716 F.2d 168, 172, 9 C.B.C.2d 359 (3rd Cir. 1983). In addition, Bankruptcy Rule 8002(c) allows a bankruptcy judge to extend the time for filing the notice of appeal.

After the February 4, 1991 Order was entered and the stay modified to allow Petitioner's divorce proceedings to continue, Petitioner did not challenge the Bankruptcy Court's ruling as the Bankruptcy Rules require. Moreover, Petitioner failed to request an extension of time under Bankruptcy Rule 8002(c). Instead, Petitioner waited until July 2, 1991, five months later, to file an adversary proceeding against every creditor, attorney, and judge he has had contact with alleging violations of the automatic stay and deprivation of his rights. Because Petitioner failed to timely perfect his appeal, the Bankruptcy Court's Order of February 4, 1991, became a valid, final, non-appealable Order. *See* Bankruptcy Rules 8001, 8002. Petitioner cannot circumvent the requirements of Bankruptcy Rules 8001 and 8002 by appealing the subsequent Order of Dismissal of July 15, 1992. *Department of Air Force v. Carolina Parachute Corp.*, 907 F.2d 1469, 1473 (4th Cir. 1990); *see also* Advisory Committee Note to Bankruptcy Rule 8002 ("[i]f a timely Notice of Appeal is not filed, no appeal may be taken later"); *Matter of Thomas*, 67 B.R. 61, 62 (Bankr. M.D. Fla. 1986) (time provisions set forth in Bankruptcy Rule 8002 are to be strictly enforced). Allowing Petitioner to attack the Order of Dismissal of July 15, 1992 would effectively emasculate Bankruptcy Rules 8001 and 8002 and the Bankruptcy Code's underlying theme of efficient administration of a bankrupt's estate. *See id.* Additionally, the Bankruptcy Court entered its final judgment in Adversary Proceeding No. 91-7002

on October 24, 1991, and no appeal was taken from that final judgment, and the Petitioner has again waived any right to complain of any purported errors made in that proceeding. Bankruptcy Rule 8002(a). This would be a collateral attack on a final judgment or order that is regular on its face, and it is not permitted. *Allen v. McCurry,* 449 U.S. 90, 94, 101 S.Ct. 411, 414, 66 L.Ed.2d 308 (1980); *Acres v. Air Line Pilots Ass'n.*, 390 F.2d 199 (5th Cir. 1968), *cert. den.*, 393 U.S. 852, 89 S.Ct. 28, 21 L.Ed.2d 122 (1968). Additionally, Petitioner feebly attempts to confuse this issue by alleging, for the very first time, that the reason neither he nor his attorney was present at the hearing held on January 30, 1991, was because he had allegedly received a "Notice of Continuance of Hearing," stating that the hearing was to be continued. Whether or not this occurred did not relieve Petitioner of his obligation to timely appeal the *sua sponte* ruling lifting the automatic stay nor of his obligation to have timely appealed the final judgment of the Bankruptcy Court in Adversary Proceeding No. 91-7002 on October 24, 1991, as aforesaid.

B. The Bankruptcy Court did not Abuse its Discretion in Modifying the Automatic Stay.

A judge's decision to lift the automatic stay is within the sound discretion of the bankruptcy judge. *Pursifull v. Eakin,* 814 F.2d 1501, 1504 (10th Cir. 1987). The judge's decision to lift the stay will be reversed on appeal only if the judge has abused his or her discretion. *Id.* On appeal from an order of the bankruptcy court, a district court may affirm, modify, reverse, or amend a judgment or

order of the bankruptcy court. Bankruptcy Rule 8013. However, the district court must accept findings of fact of a bankruptcy court unless they are clearly erroneous. *Id.; Matter of Fowler,* 407 F.Supp. 799, 801 (W.D. Okla. 1975).

Lifting the automatic stay in accordance with 11 U.S.C.A. Sec. 362(d) (West 1993) in this case permitted the Wheeler County, Texas District Court to exercise its limited jurisdiction in the kind of manner that is traditionally exclusively reserved for state divorce courts. *In re White,* 851 F.2d 170, 173 (6th Cir. 1988). In order to effectuate the administration of the bankruptcy estate, bankruptcy courts generally lift the stay to allow divorce proceedings to conclude. *See In Re Johnson,* 51 B.R. 439 (Bankr. E.D. Pa. 1985); *Schultze v. Schultze,* 15 B.R. 106 (Bankr. S.D. Ohio 1981). The Bankruptcy Code does not define a debtor's interest in property; the issue must be decided with reference to relevant state law. *In re White,* 851 F.2d at 173; *cf. Selby v. Ford Motor Co.,* 590 F.2d 642 (6th Cir. 1979) (court looked to Michigan treatment of property rights in deciding bankrupt's interest in trust funds).

With regard to Debtor's Texas divorce proceedings, the Bankruptcy Court acted properly in permitting the divorce court, with expertise in such matters, to decide questions that are an inherent part of the divorce process. *In re White,* 851 F.2d at 173 (finding that bankruptcy court properly deferred to divorce court's greater expertise on question of what property belongs to whom). The Texas divorce court's determination of Petitioner's marital property rights was necessary to the administration of Petitioner's bankruptcy estate in that the divorce court was allowed to define the property of the estate. *See* 11

U.S.C.A. Sec. 541 (West 1993). For these reasons, the District Court's holding that the Bankruptcy Court did not abuse its discretion in modifying the automatic stay of 11 U.S.C.A. Sec. 362 (West 1993) on February 4, 1991, was correct and certainly in conformance with precedent.

C. The Bankruptcy Court's Sua Sponte Modification of the Automatic Stay did not Violate Petitioner's Right to Due Process.

Petitioner claims that the *sua sponte* lifting of the automatic stay allowing Petitioner's Texas divorce proceedings to continue was improper because the action was taken in absence of the Petitioner or his attorney. Petitioner illogically reasons that the right to the stay is protected by the Fifth Amendment to the United States Constitution. Further, Petitioner, erroneously alleges he had no notice of a request for relief from the stay.

There is no constitutional right to a bankruptcy discharge, and the "fresh start" provided for by the Code is a creature of congressional policy. *In re Krohn*, 886 F.2d 123, 127 (6th Cir. 1989) (*citing U.S. v. Kras*, 409 U.S. 434, 446-47 (1973)). If Petitioner does not have a constitutional right to a discharge, he does not have the inviolate right to the stay as provided in 11 U.S.C.A. Sec. 362 (West 1993). Petitioner bases his due process violation claim on the theory that the stay is a "legally protected interest." But for filing bankruptcy, Petitioner would have no right to such stay. Once Petitioner filed bankruptcy, he subjected himself to the equitable procedures of the Bankruptcy Court. Further, Petitioner subjected himself to the provisions of the Bankruptcy Code. Section 105(a) clearly

gives the Bankruptcy Court the authority to *sua sponte* issue such order necessary and appropriate to carry out the functions of the Bankruptcy Code. In the instant case, the Bankruptcy Court *sua sponte* ordered the modification of the stay because it was necessary to the hearing and to define Petitioner's property (exempt, marital, or otherwise).

The purpose of the automatic stay is to ensure the orderly resolution of all claims and the efficient administration of the bankruptcy estate. *Pursifull v. Eakin*, 814 F.2d 1501, 1504 (10th Cir. 1987) (stay allows the federal court to retain control over the resolution of all claims pertaining to the debtor and the bankruptcy estate). Section 362(d) allows the granting of relief from the automatic stay under appropriate circumstances. 11 U.S.C.A. Sec. 362(d) provides, in part:

> On request of a party in interest and after notice under a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, unruling, modifying, or conditioning such stay –
>
> (1) for cause

Section 362(d) must be considered in its proper context. Upon the filing of a bankruptcy petition, the stay automatically prohibits interference with property of the estate. In effect, the stay prevents creditors from grabbing alleged collateral on a first-come-first-serve basis. Thus, the underlying theme of the stay is protection of the estate so that all claims can be properly prioritized. Section 362(d) allows a creditor who has cause to request relief from the stay. When a creditor specifically requests relief from the stay under Sec. 362(d), there should be at

least some notice and hearing "as is appropriate in particular circumstances." 11 U.S.C.A. Secs. 102(1)(A), 362(d) (West 1993). However, the notice and hearing requirements of Sec. 362(d) can be satisfied implicitly. *Pursifull,* 814 F.2d at 1505.

In *Pursifull,* the debtor argued that no request or modification of stay was made by a part in interest and that notice and a hearing were not provided prior to the lifting of the stay. The *Pursifull* court disagreed and found that implicit in the proceedings at hand was a need for the stay to be lifted. *Id.* at 1505. The court stated that pursuant to 11 U.S.C.A. Sec. 102(1)(A) (West 1993), "after notice and a hearing . . . means after such notice as is appropriate in particular circumstances, and such opportunity for a hearing as is appropriate in the particular circumstances." *Id.* The *Pursifull* court found that implicit in the relief sought was a request for the bankruptcy court to allow the resolution of issues in another state court to be completed. *Id.* (motion to abstain from exercising jurisdiction satisfied the procedural requirements for the lifting of the stay). In the instant case, when Petitioner's spouse requested the January 30, 1991 hearing regarding Petitioner's exempt property, it was implicit that Petitioner's marital property rights would be affected. Thus, implicit in the proceedings at hand was the need for the stay to be lifted. Notice of the January 30, 1991 hearing satisfied the requirements as contemplated by *Pursifull. Id.*

In the instant case, the Bankruptcy Court, in accordance with its broad discretion under 11 U.S.C.A. Sec. 105(a) (West 1993), *sua sponte,* permitted modification of the automatic stay to allow divorce proceedings in a

Texas state court to continue during a hearing related to Debtor's exempt property. Section 362(d) and its procedures were inapplicable. *See* 11 U.S.C.A. Sec. 105(a) (West 1993). Nevertheless, the need for modification of the automatic stay to permit Petitioner's divorce proceedings to continue was implicit considering the January 30, 1991 hearing and an inherent requirement of the administration of Petitioner's bankruptcy estate. The Bankruptcy Court so ordered modification of the stay because the definition of Petitioner's marital property rights was at issue in the Texas divorce proceedings. It was essential to the bankruptcy case that the divorce proceedings continue to define Petitioner's marital property interests. Under the circumstances, the notice and hearing requirements, if any, of Sec. 362(d) were inapplicable. Even if Sec. 362(d) notice requirements applied, there was such notice and hearing as appropriate under the circumstances. *See* 11 U.S.C.A. Sec. 102(A) (West 1993).

The issuance of the order allowing modification of the stay was "necessary . . . to carry out the provisions of [the Bankruptcy Code]." 11 U.S.C.A. Sec. 105(a) (West 1993). Petitioner has argued that "[t]he manner in which the stay was modified clearly prohibited any opportunity for objection prior to the action of the court terminating the stay." Petitioner's contention ignores the very purpose of the Bankruptcy Court's Sec. 105 *sua sponte* powers. Petitioner had notice of the hearing in which the stay was modified. Implicit in this notice was a request for relief of the stay. Petitioner chose not to attend the hearing. After the hearing, the Bankruptcy Court entered its February 4, 1991 Order which modified the stay. Petitioner had the right to challenge the Order, but refused to

appeal in accordance with Bankruptcy Rules. In light of the particular circumstances of this case, the Bankruptcy Court properly modified the stay in accordance with its broad discretionary and equitable powers and did not violate Petitioner's rights to due process.

II. CONCLUSION

None of the issues DANNY VAUGHAN presents are of precedential value that warrant review by this Court. Additionally, there is no conflict among the circuits regarding any of the issues presented. The Tenth Circuit meticulously reviewed the facts and law in reaching its conclusions. For these reasons the Court should deny Petitioner's Petition for Writ of Certiorari.

Respectfully submitted,

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